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10 Attorneys for STATE OF ARIZONA

11 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

12 IN AND FOR THE COUNTY OF YAVAPAI

13 STATE OF ARIZONA,

14 Plaintiff,

15 vs.

16 STEVEN CARROLL DEMOCKER,

17 Defendant.

CAUSE NO. CR2008-1339

**RESPONSE TO WESTERN NEWS &
INFO, INC.'S APPLICATION FOR
LEAVE AND MOTION TO UNSEAL
COURT RECORDS AND
PROCEEDINGS**

Div. PTB

Honorable Warren Darrow

18 The State of Arizona, by and through Sheila Sullivan Polk, Yavapai County Attorney, and
19 her deputy undersigned, hereby responds to the Application for Leave to Intervene and Motion to
20 Unseal Court Records and Proceedings of Western News & Info Inc. ("WNI"). As set forth in the
21 attached Memorandum of Points and Authorities, the State agrees with WNI's statement of law
22 regarding the right of the press to intervene to assert its rights and to have general access the
23 proceedings and records of judicial proceedings.

24 MEMORANDUM OF POINTS AND AUTHORITIES

25 Criminal trials are presumptively public, but there may be many compelling reasons for
26 the closure of a record or hearing. Arizona Supreme Court Rule 123(d), Access to Case Records,

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

2010 OCT 11 AM 11:35 ✓

JEANNE WICKS, CLERK

B. Chamberlain

BY: _____

1 provides: "All case records are open to the public except as may be closed by law, or as provided
2 in this rule. Upon closing any record the court shall state the reason for the action, including a
3 reference to any statute, case, rule or administrative order relied upon." The Rules further provide
4 that: "All other information in the adult criminal case files maintained by the clerk of the court is
5 open to the public, unless prohibited by law or sealed by court order." 17A A.R.S. Sup.Ct.Rules,
6 Rule 123(d)(2)(C).
7

8 Case law notes compelling reasons for closing court proceedings and sealing the records,
9 including the preservation of the defendant's right to a fair trial and to secure security and safety
10 of the jury and other trial participants. *Unabom Trial Media Coal. v. U.S. Dist. Court for E. Dist.*
11 *of California (Sacramento)*, 183 F.3d 949 (9th Cir. 1999); *Phoenix Newspapers, Inc. v. U.S. Dist.*
12 *Court for Dist. Of Arizona*, 156 F.3d940 (1998). Courts will also consider whether or not the
13 closure occurs during the course of a trial – in other words, is temporary – or is to be permanently
14 effective. *Id.*
15

16 The State believes some of the documents listed as sealed in WNI's Exhibit are sealed
17 because the Court found that the public posting of Minute Entries that reveal juror identity and
18 other information about the jury would be prejudicial to the integrity of the trial. This finding was
19 apparently made after a public hearing on April 28, 2010. This appears to have also resulted in an
20 unsealed May 6, 2010 Court Order directing the Clerk of the Court to restrict (seal) all minute
21 entries that may disclose juror identity and information. According to WNI's exhibit, at least 11
22 of the 82 sealed documents appear to sealed because of the April 28 hearing and May 6 Order
23 (May 5, 2010 "Jury Selection"; May 11, 2010 "Jury Selection"; May 12, 2010; "Jury Selection";
24 May 13, 2010 "Jury Selection"; May 14, 2010 "Jury Selection" May 18, 2010 "Jury Selection";
25
26

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1 May 19, 2010 "Jury Selection"; May 20, 2010 "Jury Selection"; May 21, 2010 "Jury Selection";
2 June 2, 2010 "Jury lists"; June 3, 2010 "Jury Questions Submitted to Judge").


3 The State agrees it is appropriate for the Court to review its Orders sealing the records to
4 either unseal them or make findings as required by law. Prior to the unsealing of any record, the
5 State believes notice should be given to all parties with an opportunity to be heard.

6 WHEREFORE, the Yavapai County Attorney prays that this Court:
7

- 8 1. Grant such other relief the Court deems fair and just;
9 2. Give adequate notice and opportunity to be heard prior to any Order unsealing a
10 previously sealed record or proceeding in this matter.

11 RESPECTFULLY SUBMITTED this 11 day of October, 2010.

12 Sheila Polk
13 YAVAPAI COUNTY ATTORNEY

14 By: 
15 Jack H. Fields
16 Deputy County Attorney

17 COPY of the foregoing mailed
18 this 11th day of October, 2010, to:

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24 And

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